REMARKS/ARGUMENTS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested. Claims 1-14 are pending.

The claims are presently amended to clarify that the method steps of the claimed invention are computerized and not performed by a human. No new matter has been added, as the specification makes clear that the claimed method is performed by computers, not humans.

Before discussing the outstanding grounds for rejection, Applicant wishes to thank Examiners Rhode and Garg for the courtesies extended during the personal interview of February 24, 2005, at which time the subject invention was explained in light of Applicant's disclosure. Additionally, the outstanding issues in the present application were discussed, and arguments substantially as hereinafter developed were presented in support of the patentability of claim 1. No agreement was reached, pending the Examiners' detailed reconsideration upon submission of a formal response to the outstanding Office Action and an updated search for prior art.

In the outstanding Office Action, claims 1, 5, 9, 13, and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lumelsky (U.S. 6,529,950 B1) in view of Egawa (U.S. 5,745,694). Claims 2-4 and 6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Lumelsky and Egawa and further in view of Shaffer (U.S. 5,898,668). Claim 7 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Lumelsky and Egawa and further in view of Reisman (U.S. 6,594,692 B1). Claims 8, 11, and 12 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Lumelsky and Egawa and further in view of Bernard (U.S. 5,918,213). Claim 10 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Lumelsky and Egawa and further in view of Spagna (U.S. 6,587,837 B1).

Applicant respectfully traverses these rejections on the grounds that independent claim 1, when considered as whole, is neither anticipated by nor obvious over the applied references.

The present invention relates to a digital content downloading method using a network. The method includes the step of receiving information designating digital content and the quality of communication selected by a consumer, at a digital content retailer possessing the desired digital content. The method further includes the steps of sending a request from a digital content retailer computer system to a resource reservation server for a reservation for the network managed by a network operator according to the transmission condition sent from the consumer, providing from the digital content retailer the desired digital content at the desired transmission condition, collecting from the consumer with the digital content retailer a charge for the desired digital content including a transmission charge corresponding to the transmission condition, and paying with the digital content retailer the transmission charge to the network operator.

The method of the present invention advantageously causes the network operator to become transparent to the user, who does not have to deal separately with the network operator to secure a channel of a subscriber line (Specification at 3-4) and does not have to make separate payments to the network operator and the digital content retailer (*id.* at 4). Since the digital content retailer has centralized responsibility for requesting a network reservation, providing digital content, collecting payment, and paying the network operator, the invention promotes efficiency and reliability in user transactions by reducing the number of steps that the user must take to download content over the network.

The system of Lumelsky is, in general terms, an object-oriented search engine, called a resource management framework (RMF). (Lumelsky at col. 2, ll. 62-64.) The purpose of Lumelsky is to provide access and reuse of content repositories across organizations.

(Lumelsky at col. 1, ll. 23-25.) A user generates a request for service that contains a generic service identifier along with other optional selection request criteria, including the type of content (video or audio only) and the representation of the content (high quality or low quality). (*Id.* at col. 4, ll. 22-31.) The RMF system locates one or more service instances that can satisfy the user's request. (*Id.* at ll. 41-43.) The service instances are located by a service mapper and combined into a mapping set that is passed back to a negotiator 40. (*Id.* at ll. 47-50.) The negotiator may modify or update the mapping set of service instances, and then the mapping set is provided to the user. (*Id.* at col. 6, ll. 24-27.) When the user wants to accept a service from the set of returned matches, he does so by forwarding an acceptance to the service requestor. (*Id.* at col. 8, ll. 26-29.)

As acknowledged in the outstanding Office Action, the Lumelsky reference does not disclose a digital content retailer but does disclose a "content provider." (Office Action at 3.) But even if a content provider is presumed to be a digital content retailer, nothing in Lumelsky teaches or suggests that the content provider performs the claimed steps of "sending a request ... for a reservation for the network managed by a network operator according to the desired digital content transmission condition sent from the consumer," "collecting from the consumer ... a charge for the desired digital content, the charge including a transmission charge corresponding to the desired digital content transmission condition," and "paying ... the transmission charge to the network operator," for reasons that will now be explained.

First, as acknowledged in the Office Action, Lumelsky does not disclose the step of "sending a request from the digital content retailer computer system to a resource reservation server of a network operator computer system, for a reservation for the network managed by the network operator computer system according to the desired digital content transmission condition sent from the consumer terminal." (Office Action at 4.) This distinction between

Lumelsky and claim 1 is significant because the present invention centralizes responsibility with the digital content retailer, and thereby enjoys advantages that are not attained by the system of Lumelsky. Specifically, the present invention simplifies the transaction to the user by relieving the user of the burden of having to deal separately with the network operator to secure a channel of a subscriber line (Specification at 3, 4) as well as from the burden of having to make separate payments to the network operator and the digital content retailer (*id.* at 4). Whereas the present invention makes the network operator transparent to the user and thereby reduces the complexity of the transaction, Lumelsky requires that the user interface with an extra entity, the RMF system, prior to accessing the content provider. (Lumelsky at col. 10, ll. 52-57 "[T]hus the negotiation only governs the agreement up to the portal of an organization.")

Turning now to the claimed steps of "collecting" and "paying," the Office Action acknowledges that "Lumelsky does not specifically disclose the step of paying the network operator" and suggests that this step is obvious. (Office Action at 4.) However, it should be noted that claim 1 defines more than merely paying the network operator. Claim 1 recites "paying, by the digital content retailer, the transmission charge [corresponding to the desired digital content transmission condition] to the network operator." This ties to the concept that the network operator is transparent to the user, so that the user transacts with fewer entities. Nothing in Lumelsky suggests that the content provider pays the transmission charge. Nor does the Office Action even assert that the content provider pays the transmission charge.

Therefore, the Office Action lacks a *prima facie* showing of obviousness with respect to the limitation of "paying, by the digital content retailer, the transmission charge [corresponding to the desired digital content transmission condition] to the network operator." In combination with the other limitations of claim 1, this is an important feature of the present invention that makes it unnecessary for the user to make a separate payment to the

network operator for the transmission condition. (Specification at 4). Lumelsky does not disclose the claimed step of "paying," and consequently, the user is presumably left to pay the network operator or the RMF operator separately for the quality of transmission. Accordingly, Lumelsky does not disclose placing centralized responsibility for efficient and reliable transactions in the hands of the digital content retailer, but instead requires the user to interface with additional entities such as the RMF system and/or the operator of the network.

With respect to "collecting," the Office Action relies on column 7, lines 1-27, of Lumelsky as disclosing the step of "collecting." However, this portion of Lumelsky merely mentions that pricing and billing occurs and does not attribute the function of pricing and billing to the content provider (i.e., the entity that the Office Action compares to a digital content retailer). In fact, Lumelsky discloses that pricing and billing is handled by the RMF 10, rather than the content provider. Specifically, Lumelsky states that the Pricing and Billing Server 76 is "part of the extended RMF" (col. 7, ll. 27-28) and shows in Figure 3, for example, the functional relationship between the Pricing and Billing Server 76 and the Negotiator 40 of the RMF 10.

Thus, it can be appreciated that Lumelsky does not teach or suggest the claimed step of "collecting from the consumer, by the digital content retailer, a charge for the desired digital content, the charge including a transmission charge corresponding to the desired digital content transmission condition." Lumelsky presumably leaves the network operator or RMF operator to collect the charge for transmission quality because Lumelsky does not disclose any interaction between the user and the content provider for payment of charges relating to quality of transmission. Since Lumelsky does not disclose the claimed feature of "collecting ... by the digital content retailer ... a transmission charge corresponding to the desired digital content transmission condition," the user of Lumelsky is presumably left to pay a network operator or the RMF operator separately for the quality of transmission. Such

extra burden placed on the user by Lumelsky can of course result in the user canceling the transaction, especially an inexperienced user who can readily be intimidated by unfamiliar decision making requirements.

Indeed, the present invention not only provides simplification and ease of transaction to the user, but also places the burden of the transaction on the entity, i.e., the digital content retailer, who has the familiarity and expertise to execute the technical details of the transaction, and who has the financial incentive to do so to assure that the transaction is completed. The net result is a happy user who easily is able to make a desired purchase, and a happy content retailer who enjoys increased commerce, i.e., a win-win result for both the user and the content retailer, which is neither taught nor suggested by Lumelsky.

Attention is now directed to the Egawa reference. Egawa discloses a centralized network resource reservation system for interconnected subscriber networks. (Col. 4, ll. 24-27.) A subscriber (i.e., user) sends a reservation request to the reservation system when he desires to establish a network resource (bandwidth) during a desired time span. (*Id.* at ll. 54-57.) The reservation system monitors links used by the users of the system and verifies the availability of resources. (*Id.* at Abstract; col. 5, ll. 31-56.)

Accordingly, a user that desires to download digital content in the Egawa system is forced to make a separate resource reservation with the network operator in order to establish a connection, and thus, the network operator is not transparent to the Egawa user. The method of the present invention overcomes the problems of Egawa because the ***digital content retailer*** "send[s] a request ... for a reservation for the network." (*See also* Specification at 3, 4.) In fact, Egawa does not even discuss the steps performed by a digital content retailer because Egawa is focused on the ability of the reservation system to handle reservation requests received directly from the user. Even the outstanding Office Action acknowledges that "Egawa does not specifically disclose a digital content retailer." (Office

Action at 4.) Therefore, Egawa cannot disclose the claim 1 steps of "sending a request," "collecting," and "paying" because those steps are performed by the digital content retailer, according to Applicant's invention.

In order to account for the lack of a digital content retailer, the Office Action states that the user of Egawa's system "can include a digital content retailer." (Office Action at 4-5). However, the user or "subscriber" discussed in the Egawa reference cannot possibly be the digital content retailer of claim 1 because the user never performs the claimed step of "receiving ... information designating a desired digital content selected by a consumer and a desired digital content transmission condition relating to a quality of communication selected by the consumer." The user in Egawa ***makes*** a reservation request that identifies a circuit assigned to the user network (Egawa at col. 1, ll. 56-60); the user does not ***receive*** the reservation request. Additionally, the user of Egawa does not "send[] a request ... according to the desired digital content transmission condition sent from the consumer" or "provid[e] ... digital content ... to the consumer." The user of Egawa ***is*** the consumer, and thus, Egawa's user cannot perform the steps of claim 1 that define the actions of the digital content retailer with respect to the consumer. In other words, the user cannot receive requests from himself, provide content to himself, and make reservation requests according to transmission conditions received from himself.

The digital content retailer of claim 1 is defined by the claimed steps that the digital content retailer performs, and the users of Egawa do not perform the claimed steps of receiving, sending a request, providing, collecting, or paying. The combination of Lumelsy and Egawa would still require a user to interface with the RMF prior to interfacing with the content provider. Likewise, the content provider remains dependent on the RMF because the RMF identifies the content provider to the user when the RMF returns a set of results that match the user's criteria. (Lumelsky at col. 10, ll. 27-57.) Consequently, even the

combination of Lumelsky and Egawa fails to teach or suggest all the steps of claim 1 and fails to enjoy the advantages obtained by the present invention, which provides a method whereby responsibility for downloading digital content is centralized with the digital content retailer to make user transactions more efficient and reliable.

Moreover, as discussed during the interview, Lumelsky and Egawa are not combinable in the manner claimed. The users of both the Lumelsky system and the Egawa system make requests relating to the quality of transmission. Since Lumelsky fails to disclose that the content provider "send[s] a request ... according to the ... transmission condition [related to quality of communication]," as defined by claim 1, the Office Action suggests that it would be obvious to modify Lumelsky such that the content provider performs the actions of Egawa's user. This, of course, does not make sense because the user of Lumelsky already makes a request relating to quality of transmission directly to the RMF system, and there is no motivation apparent in the references or in the knowledge generally available to one of ordinary skill in the art suggesting that it would be desirable for the content provider of Lumelsky to also make a request relating to quality of transmission. Thus, even if Egawa (or any other reference) disclose the concept of making a reservation request, there is still no motivation to alter the Lumelskly system so that the ***content provider*** makes a reservation request.

Therefore, the Lumelsky and Egawa references, when considered alone or in any proper combination, fail to anticipate or make obvious the invention of claim 1 because they both fail to teach or suggest a digital content retailer that performs the claimed steps of requesting, collecting, and paying.

Similarly, the other applied references of Shaffer, Reisman, Bernard, and Spagna fail to account for the above-noted deficiencies that are common to both Lumelsky and Egawa. Thus, none of the applied references, when considered alone or in any proper combination are

believed to anticipate or make obvious the invention of claim 1. Accordingly, Applicant submits that claim 1 and all claims dependant therefrom are patentably distinguishable over the applied references.

Further, the outstanding Office Action contends that various features of the claims are old and well known. Applicant respectfully submits that those features are not old and well known, including the features of claim 7 (Office Action at 14) and claim 12 (Office Action at 18). Applicant requests that the rejection of these claims be withdrawn or that *prima facia* grounds for rejection under 35 U.S.C. § 103 be provided.

In view of the foregoing discussion, no further issues are believed to be outstanding in the present application. Therefore, Applicant respectfully requests that the present application be allowed and be passed to issue.

Respectfully submitted,

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